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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/682,247	08/09/2001	Mark H. Miller	800619	1880

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EXAMINER

ROWAN, KURT C

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 03/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/682,247

Applicant(s)

MILLER et al.

Examiner

KURT ROWAN

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Dec 20, 2002
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 42-119 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 42-119 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

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## **DETAILED ACTION**

### ***Claim Rejections - 35 U.S.C. § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 42-49, 58-59, 67-73, 82-88, 93-100, 109-110 are rejected under 35 U.S.C. 102(b) as being anticipated by Cheshire (5,255,468) for substantially the same reasons stated in the first Office Action.

The patent to Cheshire shows an insect trap in Figs. 1-2, 4, that generates an air outflow using motion and heat to attract insects that flows outwardly from the device to create a plume flowing downwardly and spreading radially from the device. Cheshire also generates an inflow substantially counter to and immediately adjacent an upper portion of the plume and then into the trap such that insects attracted to said outflow and flying along the upper portion of the plume towards the device intersect the inflow and are drawn into the inflow as discussed column 2, lines 28-68, column 8, lines 43-55. Cheshire shows a cover member 11-13.

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***Claim Rejections - 35 U.S.C. § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 50-52, 60-62, 101-103, 111-113 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cheshire, Jr.

The patent to Cheshire shows an insect trap as discussed above. Cheshire discloses the use of a collection bag in column 4, lines 31-32 which would appear to be mounted on the outside of lower portion of the housing 15 which is a tubular member. In reference to claim 50, Cheshire does not disclose mounting an insect trap on the inside of the tubular member, but it would have been obvious to mount the a trap on the inside of the tubular member since the function is the same and no stated problem is solved.

5. Claims 53-57, 63, 64, 74-81, 89-92, 104-108, 114-119 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cheshire, Jr. (5,255,468) in view of Waters (4,506,473).

The patent to Cheshire shows an insect trap as discussed above, but does not show a carbon dioxide attractant. Waters shows a carbon dioxide insect attractant noting Figs.1 and column 3, line 1-12 that flows into trap 11 by connecting tube 14 from reaction chamber 12. In reference to

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claims 53, 55, 56, 57, it would have been obvious to provide Cheshire with a carbon dioxide attractant as shown by Waters to attract more insects. In reference to claim 54, the combination of Cheshire as modified by Waters does not disclose where the carbon dioxide is supplied in relation to the fan. However, it would have been obvious to supply the carbon dioxide to a point above the fan to more effectively disperse the carbon dioxide to an area surrounding the trap.

### *Response to Arguments*

6. Applicant's arguments filed Dec 20, 2002 have been fully considered but they are not persuasive. The applicant argues that the same issue was addressed by the Board of Appeals in application 09/718,643. However, the different reference (Deyoreo) was applied in the previous case. In the present application, Cheshire is applied. The insect attractants employed by Cheshire are the light 16, air from the fan which contains carbon dioxide and the movement of the air which are part of the outflow. Also the light source heats the air in the outflow. Hence it is unclear that the same issue are involved and that the previous board decision is binding.

### *Conclusion*

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **KURT ROWAN** whose telephone number is (703) 308-2321.

The examiner can normally be reached on Monday-Thursday from 6:30 a.m. to 5:00 p.m.

The fax phone number for the organization where this application or proceeding is assigned is (703) 306-4195 or (703) 305-3597.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

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A handwritten signature in black ink that reads "Kurt Rowan". The signature is written in a cursive style with a checkmark-like flourish at the end.

KURT ROWAN

PRIMARY EXAMINER

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March 6, 2003